

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

D-1 DR. RAJENDRA BOTHRA

D-3 DR. GANIU EDU

D-4 DR. DAVID LEWIS

D-5 DR. CHRISTOPHER RUSSO,

Case No. 18-20800

Hon. Stephen J. Murphy, III

Defendant.

/

JURY TRIAL EXCERPT: VOLUME 4

BEFORE THE HONORABLE STEPHEN J. MURPHY, III
United States District Judge
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan 48226
Friday, May 20, 2022

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(Appearances continued next page)

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Government Exhibit No. 151 Dr. Ronald Kufner Employment Contract	12	12
Government Exhibit No. 173, Note of Dr. Bothra re: DME	43	43

1 Detroit, Michigan

2 Friday, May 20, 2022

3 — — —

4 (Proceedings in progress at 12:56 p.m., all parties
5 present, jury present)

6 THE COURT: Next from the United States.

7 MR. HELMS: Yes, Your Honor. The government calls
8 Dr. Ronald Kufner.

9 THE COURT: Okay.

10 MR. HELMS: It will take us a moment to retrieve him.

11 THE COURT: In-court break if you want to stretch,
12 talk to each other, relax, review your notes.

13 (Brief pause)

14 THE COURT: Okay. Here's our witness. Back to
15 business. Good afternoon, sir.

16 R O N A L D K U F N E R

17 was called as a witness herein, and after being first duly
18 sworn to tell the truth and nothing but the truth, testified on
19 his oath as follows:

20 THE WITNESS: Yes, I do.

21 THE COURT: Very good. Go ahead and have a seat in
22 the chair. Now, the first thing is for the time you're
23 testifying, I'm just going to ask you to remove your mask.

24 THE WITNESS: Okay.

25 THE COURT: And that's so the court reporter can

1 understand your answers better. I will ask you just to be
2 comfortable, speak toward the mic but not too close to it and
3 everything should go just fine.

4 Go right ahead, Mr. Helms.

5 DIRECT EXAMINATION

6 BY MR. HELMS:

7 Q. Good afternoon, Dr. Kufner. Could you please state your
8 full name for the record?

9 A. Ronald Paul Kufner, spelled K-u-f as in Frank, n as in
10 Nancy, e-r.

11 Q. And are you a former employee of the Pain Center?

12 A. I am.

13 Q. Could you please describe to the jury your educational
14 history?

15 A. I'm sorry?

16 Q. Could you please describe to the jury your educational
17 background?

18 A. I graduated undergrad with a degree in science and
19 psychology; medical school at the Oregon Health Science
20 University; trained a year of medicine and three years in
21 anesthesiology at Mayo Clinic in Rochester, Minnesota; and then
22 a two-year pain fellowship 2010 to 2012 at the University of
23 South Florida.

24 Q. And do you have any board certifications?

25 A. I'm board certified in anesthesiology and in pain

1 medicine.

2 Q. When did you start working in Michigan?

3 A. When did I start working?

4 Q. In Michigan, the State of Michigan.

5 A. I -- the first time was in Traverse City in 2012, and then
6 again I left and worked in Florida for a few months and came
7 back in May of 2014 to the Pain Center.

8 Q. Okay. How did it come about that you became employed with
9 the Pain Center? What -- what did you first do to start
10 looking for a job?

11 A. Well, I was in a clinic in Bradenton, Florida that wasn't
12 working out at all and started a job search. And St. John's
13 Hospital has a service for people who are on staff there making
14 connections between would-be employers and physicians looking
15 for positions, and they introduced me to Dr. Bothra.

16 Q. Okay. And did you initially interview with Dr. Bothra?

17 A. I did.

18 Q. What did Dr. Bothra tell you about the Pain Center when
19 you interviewed?

20 A. Before I had a chance to say anything, he said, "We treat
21 people who have pain. We treat people who have pain regardless
22 of their race, religion, background, insurance. If they have
23 any way that we can help them, we will." And I will admit at
24 that point he had me hooked.

25 He did say that I would have my own practice and he

1 wouldn't tell me how to do it. I can't say that that held
2 true.

3 Q. Did you meet anyone else at your first visit to the Pain
4 Center?

5 A. I met Drs. Edu and Dr. Bothra -- I'm sorry, Backos.

6 Q. What did Dr. Edu, if any -- tell you, if anything, at your
7 first meeting?

8 A. He told me that it was busy. He told me that the medical
9 assistants were very helpful, especially in the injection room
10 where they would have everything set up for me. He talked
11 about the money that can be made, and at that time showed me
12 his 1099 that showed the year -- that year prior he had taken
13 home approximately \$800,000.

14 Q. Had you asked about salary payments at the Pain Center or
15 did he provide that information unsolicited?

16 A. I don't recall asking Dr. Edu. Dr. Bothra had talked
17 about the package which had a guarantee plus a bonus.

18 Q. Was that first initial time with Dr. Edu where he talked
19 about money, was that the only time that he talked to you about
20 money?

21 A. He talked about money he spent on things, his rentals. He
22 didn't talk much about making money after that. It was mostly
23 about where it was going, and some of it was rather obvious.

24 Q. He told you about things he was spending his money on?

25 A. I'm sorry?

1 Q. He told you about things he was spending his money on?

2 A. Well, yeah. I mean he's -- he's talking about having
3 rentals and taking care of those, and the equipment that he was
4 coming in with, the new jewelry, the watches. It was fairly
5 obvious that he was spending. He did also mention that his
6 wife liked to spend a lot of money.

7 Q. And when you say rentals, are you referring to property
8 that he owned and rented to others?

9 A. Properties that he owned, yes.

10 Q. What about Dr. Bothra, did he say anything to you at that
11 initial visit or subsequently about money?

12 A. Oh, several times. On the first visit, one of the last
13 things he said to me is that "we're going to show you how to
14 make money." And he came to that in several other discussions
15 where "if you want to make money, this is what you have to do."
16 And it was impressive to me that when I would say if I can just
17 take good care of the patients, the money will be there and
18 that will be good enough, and it was -- he didn't even argue
19 that; it was like I had said nothing.

20 Q. What were some of the things he told you you should be
21 doing to make money?

22 A. See more patients.

23 Q. Did he give an approximation of how many patients he
24 thought you should see?

25 A. I'm sorry?

1 Q. Did he give an approximation as to how many patients he
2 thought you should -- you should see?

3 A. Well, that came much later, about the third year, and it
4 wasn't even directly to me. It was to -- to Denisa who was the
5 medical assistant who ran the Interventional Pain Clinic and I
6 believe it was Nicole was a registered nurse. And they said on
7 separate occasions he was asking about who needed more
8 fluoroscopy -- fluoroscopy time, and they both answered Dr.
9 Kufner does. And his answer is, "He's not going to get more
10 time till he's seen 80 to a hundred patients a day."

11 Q. So he wanted you to see 80 to a hundred patients a day?

12 A. Yes.

13 Q. Going back to that first day when you met Dr. Backos, Dr.
14 Backos, did you learn anything about Dr. Backos that day?

15 A. I knew from Dr. Bothra that Dr. Backos was in recovery. I
16 do not recall if on the first day I heard that from Dr. Backos,
17 but I do know that early on my tenure there he and I had frank
18 discussions about being in recovery.

19 Q. And so you were in also recovery?

20 A. I am.

21 Q. Are you able to explain to the jury what you recovered
22 from?

23 A. Well, addiction is a disease and I have it. And when
24 you're active in your disease, you really don't understand how
25 crazy you're behaving, and this explains a lot of things that

1 people see. And if you're not an addict, there's really no
2 explaining it. You have to have an -- I guess you have to be
3 there. But it is a disease of the mind. And recovery is when,
4 by God's grace, you have learned that this is not the best
5 life, that there's some reason that you want to have a better
6 life, and the way to do it to find ways to avoid the drugs,
7 avoid the alcohol. And it takes time, it takes effort, and
8 sometimes there are failures, but life gets a whole lot better
9 without it, and there comes a time where that becomes your new
10 identity. But recovery does not mean cured. Anyone who is in
11 recovery has the capacity to relapse and get active in the
12 disease again.

13 Q. And when you were first hired by Dr. Bothra, did you
14 inform him about the fact that you were recovered, in recovery?

15 A. When he was through telling me about the practice, that
16 was one of the first things I told him.

17 Q. And what was his response?

18 A. I'm sorry?

19 Q. What was Dr. Bothra's response to you?

20 A. His response was that he believes in second chances, that
21 there were other people, I believe that's about the time he
22 mentioned Dr. Backos, and he went clear back to his time as the
23 Medical Director or Chief of Medicine at Holy Cross when he
24 gave other physicians second chances and how some failed, some
25 succeeded, but he always believed in second chances, so that

1 was a win over too.

2 Q. So after this interview did you -- were you hired by Dr.
3 Bothra?

4 A. Yes, I was.

5 Q. When did you first officially start working at the Pain
6 Center?

7 A. It was May 1st, 2014.

8 Q. And what was your title?

9 A. My title?

10 Q. Yes.

11 A. I guess you'd call me staff physician. They really didn't
12 talk about titles. I -- I wasn't an officer of any kind.

13 Q. Did you sign a con -- a contract with the Pain Center?

14 A. I signed an employment agreement, yes.

15 Q. Dr. Kufner, there should be a binder near you, and I can
16 come help you if you'd like, that has Exhibit 151 in it. Do
17 you want me to come help you?

18 A. Is -- oh, here?

19 (Brief pause)

20 Q. Dr. Kufner, have you had a chance to review what
21 Exhibit 151 is? And if not, let me know when you have.

22 A. I've seen this many, many, many times. I'm sure that if
23 you ask me something that's not at the top of my head, I can
24 find it rather quickly.

25 Q. But do -- do you know what this document is?

1 A. Do I -- I'm sorry?

2 Q. What is Exhibit 151, the document in front of you?

3 A. What I see is Government Exhibit 151, Independent
4 Contractor Agreement dated May 1st, 2014 between the Pain
5 Center USA, PLLC and Ronald Kufner, Michigan Licensed
6 Physician.

7 Q. So is that the contract that you signed with the Pain
8 Center when you started?

9 A. Yes, it is.

10 MR. HELMS: Your Honor, at this time I would move
11 Exhibit 151 into evidence.

12 THE COURT: Okay. Without objection, that's
13 received. Go right ahead.

14 MR. HELMS: Ms. Adams, could you pull up 151?

15 BY MR. HELMS:

16 Q. So Dr. Kufner, with whom did you negotiate this contract?

17 A. With Dr. Bothra.

18 Q. Okay.

19 A. I would not say it was much of a negotiation. He pretty
20 much said, "This is what I have, this is what I'll do for you,"
21 and it wasn't a stern take it or leave it but there wasn't a
22 lot of room for negotiations.

23 MR. HELMS: And Ms. Adams, could we turn to page 3?

24 A. Okay.

25 MR. HELMS: And then if you could highlight the

1 portion 6, "Compensation."

2 BY MR. HELMS:

3 Q. Now, Dr. Kufner, I don't want you to have to read this
4 word for word, but in general, first, did you have a minimum
5 salary that you were guaranteed during your time? And if --
6 Dr. Kufner, if you can't see in -- in this document --

7 A. No, actually I just needed to find -- find the right page
8 here, but I have it, I'm -- I'm good.

9 Q. Okay. Did you have a minimum salary that you were going
10 to receive?

11 A. Yes. In fact, the way he stated it was "I'll guarantee
12 you a million dollars over four years," I believe, or
13 \$1.2 million over four years.

14 Q. So about \$300,000 per year?

15 A. Yes.

16 Q. Okay. And then if you move to Section (b) of Section 6.

17 A. B as in Beta?

18 Q. Yes.

19 A. Okay.

20 Q. Does that cover bonuses that you can receive?

21 A. Yes. It -- it was talking about a 30 percent of -- I
22 would receive 30 percent of the collections amount.

23 Q. Okay. And then down in Section (c)(i) is there additional
24 sections about bonuses there?

25 A. Yes. There's office space practice. If the office space

1 practice is converted to a surgical center, then the amount
2 that I would receive for professional services would change.

3 Q. Okay. And so an ambulatory surgery -- surgery center
4 referenced in Section (c), could you explain to the jury what
5 that is?

6 A. Okay. Initially it was when I was there we did the
7 injections as it was in a medical clinic, just like if you go
8 into a doctor's office and get a flu shot but a bit more
9 complicated. We had the equipment, we had the supplies, but
10 the payment was based on a fee scale set by Medicare for
11 office-based procedures. When you convert to an ambulatory
12 surgery center, there's an expectation that you will meet the
13 rules, regulations and procedures that are no different than if
14 you had the same work done in a hospital with hospital staff.
15 There's a higher level of expectation on the part of the
16 players in order to protect the patients and ensure that
17 they're getting proper care with all due attention to infection
18 control and proper medical reviews and the like.

19 For that, the compensation is then spit -- split into
20 two forms. There's a separate form where the surgical center
21 gets paid just as when you go have an operation the hospital
22 gets paid, and then there's the professional fee where the
23 operator or the surgeon, the anesthesiologist doing the
24 injection gets a professional fee. Just as when you have
25 surgery you find out, no, the surgeon sends you a bill, the

1 anesthesiologist sends you a bill, those are the professional
2 fees.

3 And his offer was that I would get 90 percent of the
4 professional fee. He would still keep back ten percent. And
5 for all other work it would still be at 36 percent and that
6 there would be no -- no part of the -- of the facility fee
7 would come to me 'cuz I had no financial interest in the
8 facility.

9 Q. Okay. So under the terms of your contract, whether you
10 performed a service under a normal professional fee or under
11 the ambulatory surgical center, would you receive a portion of
12 whatever was paid to the Pain Center for that procedure?

13 A. Based on my work, yes.

14 Q. Okay. So is it fair to say that you had an incentive to
15 perform procedures?

16 A. Yes, I did.

17 Q. A monetary incentive?

18 A. Yes.

19 Q. Do you know if any of -- do you know if Dr. Russo, Dr.
20 Lewis, Dr. Edu or Dr. Bothra had similar contracts?

21 A. Well, since Bothra, Dr. Bothra owned it, he had his own
22 interest. As far as the rest of us, everybody had contracts
23 that were similar to mine. In fact, when Dr. Bothra handed me
24 the contract, he told me that it was the -- exactly the same as
25 Dr. Edu's except the percentages for him were different.

1 MR. CHAPMAN: Objection, Your Honor. Calls for
2 speculation related to the other defendants' contracts.

3 THE COURT: I'm going to -- I'm going to sustain that
4 objection on a different ground because I -- I think -- I think
5 that holding this witness's understanding of what Dr. Bothra
6 said about the others is speculative and may raise some
7 cross-examination issues. So I think the question was fine,
8 the answer was fine, but I'm directing the jury not to consider
9 what this witness heard from Dr. Bothra about the other
10 contracts of the other defendants.

11 Go ahead, Mr. Helms.

12 MR. HELMS: Your Honor, just for the sake of making a
13 record, I would --

14 THE COURT: Yeah.

15 MR. HELMS: -- I would suggest that any comment that
16 Dr. Bothra has made to this witness is a party admission and
17 the statement of a co-conspirator.

18 THE COURT: I -- I agree. I agree. I agree. It's
19 the substance that I'm concerned about, and that's what my
20 instruction to the jury went to, but I agree with you.

21 Go right ahead.

22 BY MR. HELMS:

23 Q. So you don't personally -- your contract had an incentive
24 to perform injections or procedures, is that correct?

25 A. Yes. Forgive me if I'm out of line, but I did see a

1 contract offer that had different percentages than mine and I
2 had discussions with other defendants about their percentages,
3 so it didn't just come from Dr. Bothra.

4 MR. HELMS: And Your Honor, is it -- is it the
5 Court's ruling that I cannot go into those discussions?

6 THE COURT: Well, if you have a discussion between
7 this doctor and a defendant that impacts something between that
8 defendant and this doctor, that's perfectly fine. My ruling
9 was in terms of cross-examination and attenuation, a
10 conversation between this doctor and a defendant who's
11 testifying or made a statement out of court about another
12 defendant's arrangement is -- is substantively troubling for a
13 number of reasons it's not worth going into, but that's my
14 ruling.

15 Go ahead.

16 MR. HELMS: Thank you, Your Honor.

17 THE WITNESS: If I was out of line, I apologize.

18 THE COURT: You're fine, Doctor. Just keep answering
19 what's asked and we'll be fine.

20 Go ahead, Mr. Helms.

21 BY MR. HELMS:

22 Q. Dr. Kufner, did you have specific conversations with Dr.
23 Edu about the terms of his contract?

24 A. About the terms of his contract? No, I can't say that I
25 did.

1 Q. Did you have any discussion with Dr. Lewis about the terms
2 of his contract?

3 A. Yes, but they were brief and short. But I acknowledged
4 that I knew he was getting what I thought was a low rate and he
5 kept saying things will work out.

6 Q. Did he -- did that conversation, if at all, entail whether
7 or not he would receive bonuses based on procedures performed
8 by him? Just yes or no.

9 A. No, it didn't say that.

10 Q. Okay. And then with respect to Dr. Russo, did you have
11 any conversations with him about the terms of his contract?

12 A. Yes, we did.

13 Q. And what did he tell you about his contract?

14 A. That his rates were lower but similar to mine in that we
15 were paid by what we did.

16 Q. So Dr. Russo indicated that he was paid based on
17 procedures?

18 A. Oh, I can't say that that was the only -- we were paid for
19 what we did which included procedures. The procedures were the
20 most lucrative part of what we did.

21 Q. Yeah. But the more -- the more services you provide --
22 you provided, the more money you could make?

23 A. Yes.

24 Q. Which Pain Center location did you primarily work at?

25 A. I worked -- my clinic was in Eastpointe, and I worked at

1 Warren for the sole purpose of doing injections and providing
2 sedation.

3 Q. So when you saw patients for clinical visits, that was
4 solely in the Eastpointe location?

5 A. Well, there were rare exceptions. Maybe one or two dozen
6 times in an entire year I might see a patient in -- excuse
7 me -- in Warren at the -- to be helping out.

8 Q. Okay. But the vast majority of your clinical visits would
9 be at Eastpointe?

10 A. Absolutely.

11 Q. And then when you would do any injection or when you would
12 assist another doctor with an injection, that would be at the
13 Warren location?

14 A. Well, it was either doings injections or doing sedation.
15 I wasn't assisting anyone with any injections.

16 Q. I apologize for the wording.

17 So when you were -- when you were doing injections or
18 if you were doing sedation for another doctor, that was all in
19 Warren?

20 A. Fluoroscopic injections, yes. I did other injections in
21 the clinic but that had nothing with the ASC or fluoroscopy.

22 Q. Okay. Was there a reason why you primarily did all of
23 your clinical work in Eastpointe if you're aware?

24 A. That was pretty much what I was hired for. Dr. Bothra
25 made that clear that he was -- wanted to staff that clinic and

1 make it full time 'cuz he had been covering it one or two half
2 days a week for some time.

3 Q. Okay. Did he ever give you any other -- any other
4 indication about why he wanted you to do clinical visits
5 primarily in the Eastpointe location?

6 A. I'm sorry, could you...

7 Q. Did Dr. Bothra ever give you any other indication as to
8 why he wanted you doing clinical visits in Eastpointe as
9 opposed to Warren?

10 A. Well -- well, are you asking why I didn't see patients in
11 Warren or why I did see patients in East -- Eastpointe?

12 Q. I'm asking if you were ever given a reason for why you
13 weren't seeing patients in Warren.

14 A. Well, Dr. Bothra told me that Dr. Edu didn't want me
15 there. I'm not sure that I believe that.

16 Q. Okay.

17 MR. WEISS: Your Honor, I'm going to object as to the
18 editorial.

19 THE COURT REPORTER: Wait.

20 THE COURT: That -- that --

21 THE COURT REPORTER: Speak through microphone please.

22 MR. WEISS: I'm going to object as to the editorial.
23 That wasn't --

24 THE COURT: That's -- that's sustained. Okay.

25 MR. WEISS: Ask that it be stricken from the record.

1 THE COURT: That's stricken from the record. We're
2 not -- we're not here to have the jury construe the beliefs as
3 to the truthfulness or non-truthfulness of other defendants.

4 Go ahead --

5 MR. WEISS: Thank you, Your Honor.

6 THE COURT: Yes, you're welcome.

7 Go ahead, Mr. Helms.

8 BY MR. HELMS:

9 Q. Let's turn to a different subject, Dr. Kufner. You had
10 mentioned an ambulatory surgical center, correct?

11 A. Yes.

12 Q. Do you know when the Pain Center opened an ASC?

13 A. I can't tell you the exact date, no. It was
14 approximately -- I was in my third year there I think.

15 Q. So sometime in 2016 or 2017?

16 A. Well, it was a process where we started doing cases in the
17 physical area, but it later became certified as an ASC. Even
18 though the physical environment was there, we had to go through
19 a certification process, and those dates are -- are lost to my
20 memory.

21 Q. Okay. And in terms of the requirements for an ambulatory
22 surgical center, what are -- what are the general requirements
23 that need to be met to operate an ASC?

24 A. Well, there's a minimum number of beds that are supposed
25 to be there in the pre-operative area and the post-operative

1 area for each individual certified room.

2 There is supposed to be certain pieces of equipment,
3 suction, oxygen availability in the certified rooms as well as
4 in those waiting areas. Those are safety precautions.

5 There are clear expectations about how medications
6 are handled including narcotics: being counted at the beginning
7 and ending of every day and every dose administered being
8 signed out and waste being documented. And there is very clear
9 guidelines and -- and expectations I think that rises to the
10 level of policy that medications have to be used for one
11 patient and one patient only and that vial cannot be reused.
12 Multi-dose vials are not to be used in --

13 MR. WEISS: Your Honor --

14 A. -- a certified surgical center.

15 MR. WEISS: Your Honor, excuse me.

16 THE COURT: Yes.

17 MR. WEISS: I would object. Number one, we're
18 getting into --

19 THE COURT REPORTER: Excuse me. Mr. Weiss, I need
20 you to speak into a microphone.

21 THE COURT: All right. Number one?

22 MR. WEISS: Number one, we're getting into a
23 narrative. Number two, there's no demonstration that this
24 doctor has the expertise and experience to proffer an opinion
25 as to what an ambulatory surgical center is required.

1 THE COURT: I will sustain the objection on the
2 ground of the narrative answer because I think -- I think it's
3 going beyond the question that was asked. I -- I do find that
4 it's well within the witness's presumed knowledge as a pain
5 specialist doctor to describe to the jury how a room or certain
6 portions of a medical facility should be set up, but that's
7 been done.

8 So go ahead, Mr. Helms.

9 BY MR. HELMS:

10 Q. Dr. Kufner, in the past you have worked in hospitals,
11 correct?

12 A. Yes, I have.

13 Q. And is it fair to say that the standard of care and -- and
14 cleanliness standards of an ASC should meet those of a
15 hospital?

16 A. That is the purpose. An ASC should meet the same
17 standards as a hospital.

18 Q. And was the ASC at the Pain Center meeting those
19 standards?

20 A. Woefully, no.

21 Q. Can you describe to the jury a few of the most egregious
22 reasons why you believe those standards were not being met?

23 A. Well, I have grave concern --

24 MR. CHAPMAN: Your Honor, objection.

25 THE COURT: Hold on a minute. What's your objection?

1 MR. CHAPMAN: First, this is calling for opinion
2 testimony of somebody who hasn't been established as an ASC
3 expert as Mr. Weiss said.

4 Second of all, no defendants, specifically Dr. Lewis,
5 have been charged with improperly running an ASC in this case,
6 and there's been no prior bad acts notice that this would be
7 part of the government's case in chief against Dr. Lewis or any
8 other defendant.

9 THE COURT: Okay. As to the 404(b) issue, what's
10 your response to that, Mr. Helms?

11 MR. HELMS: Your Honor, the -- the -- the first
12 charge in this case is a health care fraud conspiracy count
13 that spans January of 2013 through 2018, and the defendants are
14 alleged to have engaged in a number of different frauds. Even
15 if it's not specifically named in the indictment, they are part
16 and parcel. Any --

17 THE COURT: Wait a minute. He's talking about the
18 cleanliness or non-cleanliness of the facility, ASC, ambulatory
19 surgical center, and the objection is that this is other acts
20 evidence not noticed and overly prejudicial beyond its
21 probative value. Answer?

22 MR. HELMS: These are not other -- the government
23 does not believe they are other acts; they are res gestae. And
24 it's not just cleanliness; it's billing at -- for an ASC
25 which -- which comes with a higher reimbursement rate. When an

1 ASC's standards aren't being met --

2 THE COURT: Stop right there. That's not necessary.
3 I'll overrule the objection. I'll allow the witness to testify
4 based on his experience in evaluation of the conditions in
5 which he was working, and -- and I think based on that, you can
6 make the points you wanted to make with regard to Count 1.

7 Go ahead, Mr. Helms.

8 BY MR. HELMS:

9 Q. Dr. Kufner, just provide the jury with some of the
10 examples that you noticed that were why the Pain Center's ASC
11 was not meeting the requirements that were necessary.

12 A. Well, I'll try to be very narrow. We are not allowed in a
13 surgical center to use multi-dose vials, and vials are to be
14 used for a single patient only, and if there's anything left
15 over, the remainder was to be discarded and a fresh vial for
16 each patient. This was not done. First of all, multi-dose
17 vials were used between patients, and even single use vials
18 that were intended to be used only once would be held over even
19 overnight and used on other patients. And I can say that with
20 confidence because on my injections day I would go to the
21 cabinets before the assistants got there and throw away
22 everything that had been opened the day before and kept over so
23 that we were at least starting with fresh medications in the
24 morning.

25 If you want other examples, that was -- there are a

1 number of checks that are supposed to be done: room
2 temperature, refrigerator temperature where drugs are, and
3 that's supposed to be documented on a daily basis. I watched a
4 registered nurse fill in months' worth of records that had not
5 been attended to at all and then refuse to sign off because she
6 was willing to put numbers down but not say that they were
7 real, only to have somebody else sign those pages.

8 Q. Okay.

9 A. Narcotic count, narcotic control. Narcotics are supposed
10 to be counted by two different people, a nurse and a doctor,
11 two nurses or two doctors at the beginning and end of every
12 shift. This was not done most of the time. A nurse would do
13 the count and somebody else would come out the next day or --
14 or hours later at least and just sign it.

15 THE COURT: Okay. All right. Next question. Go
16 ahead.

17 BY MR. HELMS:

18 Q. Dr. Kufner, do you know, is there a difference in billings
19 for procedures performed not in an ASC versus procedure --
20 procedures billed in an ASC?

21 A. A huge difference.

22 Q. What is the huge difference?

23 A. I've been quoted as saying I think three to four times.
24 That was speculative on my part. What I do know is that when
25 you are billing from an ASC, between the facility charge and

1 the professional charge, it is considerably more than what you
2 get one payment for doing the same procedure in a clinic. But
3 I want to be careful about what I said in the past was taken as
4 gospel. I do know that there's a huge difference, but the
5 exact numbers I would have to defer to somebody who is -- has
6 billing expertise.

7 Q. So in general, it's fair to say that you can bill more for
8 procedures performed in an ASC?

9 A. Oh, clearly.

10 Q. Which doctors at the Pain Center worked in the ASC?

11 A. I did, Dr. Edu, Dr. Bothra, Dr. Russo and Dr. Lewis.

12 Q. Let's turn our attention now to the pharmacy that was
13 located next to the Pain Center in Warren.

14 A. Okay.

15 Q. Are you familiar with that?

16 A. Vaguely. I -- I only was under the understanding that Dr.
17 Bothra owned it.

18 Q. Okay. Is it fair to say that during your course
19 of employment --

20 MR. WEISS: Your Honor, I'm -- I'm going to object as
21 to that, his understanding. We have no foundation as to where
22 that understanding came from. I'm going to object on the basis
23 of hearsay and confrontation.

24 THE COURT: Okay. Well, you'll be able to cross-exam
25 him, but he said he understand -- understood that Dr. Bothra

1 owned the -- the business and we can probe that later. It
2 seems to me that his understanding is his knowledge and that's
3 the foundation for the answer.

4 Go ahead, Mr. Helms.

5 BY MR. HELMS:

6 Q. So different subject, Dr. Kufner. During the course of
7 your employment with the Pain Center, I take it you had
8 conversations from time to time with Dr. Bothra, is that fair?

9 A. Yes, I did.

10 Q. From those conversations, did you get a sense as to what
11 his primary sense of focus was?

12 A. Probably the -- well, not probably. Clearly, the one
13 thing he said directly to me was he wanted to see me sending
14 more durable medical equipment home with patients.

15 Q. Did he tell you why he wanted you to do that?

16 A. I'm sorry?

17 Q. Did he tell you why he wanted you to send home more
18 durable medical equipment?

19 A. Well, he actually told me that's the way he only made any
20 money in that clinic. That everything else that we did, well,
21 his share just barely covered the expenses, and if I wasn't
22 sending people home with durable medical equipment from his
23 clinic, that he wasn't really making any money.

24 Q. During your time at the Pain Center did you ever have
25 conversations with Dr. Bothra where he indicated that the

1 doctors really needed to focus on the quality of patient care?

2 A. No.

3 Q. Not one time?

4 A. No. In fact, I -- I complained about the conditions.
5 Sometimes essentially I told him myself that there were
6 procedures I wanted to do but the place was too dirty to do
7 them. I said that to his face, and he said, "Well, we do what
8 we can do." There was even a day where there was so much filth
9 and garbage underneath the fluoro table, I was providing
10 sedation, I couldn't stand to look at it, so I got a broom and
11 swept it out and I was sweeping it. This was before it was an
12 ASC. But it had Band-Aid -- Band-Aid wrappers, caps from --
13 from needle hubs, just filth. And as I was sweeping it out, I
14 almost walked into Dr. Bothra and Dr. Edu and they saw me doing
15 the sweeping and they both had a good laugh over it. So he --
16 he brushed me off anytime I talked about cleanliness.

17 THE COURT: Okay. Next question.

18 Q. I'd like to ask you some questions about the standard
19 practices of the Pain Center. In general, how many patients
20 per day were seen, do you know?

21 A. I -- who are we talking about again? I'm...

22 Q. At the Warren location. Do you know how many patients
23 were seen?

24 A. At the Warren? Oh, I -- I would see the -- I should
25 explain. I had to bring my billings over at the end of the day

1 when I was in Eastpointe, and most often the schedule was still
2 up and I would see anywhere from a hundred to a 120 patients on
3 the list marked off, not marked as no shows but marked off, so
4 I had to assume those patients were seen.

5 Q. And you yourself at the Eastpointe location, how many
6 patients a day would you see?

7 A. In the first year, 20 to 30 in a day. Second year, it
8 started getting busier. My last year I would see maybe 50, on
9 a really bad day 60. Those were tough days.

10 Q. For you for a new patient visit, typically how long would
11 that last?

12 A. Minimum of 30 minutes, often more.

13 Q. And what types of things would you do during a new patient
14 visit?

15 A. I would review any of the material I had to begin with, if
16 there were MRI or CT scans, X-rays. Very seldom did I have the
17 luxury of medical records from the outside. But the medical
18 assistants would take a cursory history for me, and then I
19 would go in and go over the -- excuse me, the patient's
20 history, do a physical examination, looking at -- you know,
21 focusing on where their pain issues were. I would talk with
22 them about the plan and then document things.

23 Q. Now, you mentioned that medical assistants would have
24 asked questions of the patients before you saw the patient, is
25 that right?

1 A. Yeah. Things like, "What's your main complaint? Do you
2 have allergies? What medication do you take?"

3 Q. Now, even though the medical assistants asked those
4 questions, would then -- would you then ask -- also ask similar
5 questions to the patient?

6 A. I would go over those and -- and spot-check about --
7 especially about the pain, but I'd look at the allergies and
8 the medications and I might have questions.

9 Q. With respect to established patients, so a patient who had
10 already come once and -- and was now there for the second or
11 third or fourth time, what was your typical visit like with
12 them?

13 A. Depending on the patient and the problem, five to
14 15 minutes.

15 Q. Would there be -- would there still be -- excuse me.
16 Would there still involve a physical exam with an established
17 patient visit?

18 A. If they were returning patients and just there for
19 medication refills, it would be brief and the exam would amount
20 to what I could see and just a normal -- normal conversation:
21 were they walking steady, did they seem at ease, were they
22 breathing normally, were they content with how things were
23 going. If they had a pain complaint, then I would do a more
24 focused exam.

25 Q. So you would ask questions about how they were doing?

1 A. Yes.

2 Q. And if they indicated a problem, you would ask more
3 questions?

4 A. Yes.

5 Q. Like to move to injections now. Did you have an
6 understanding as to how many injections were performed at the
7 Pain Center on any given day?

8 A. On any given day?

9 Q. Or how many patients received injections on any given day?

10 A. Well, that too increased. There were -- when I first
11 started there, it seemed like it was around 30, maybe more.
12 That number gradually grew to 40, became a routine number, and
13 by the time I left, 50 to 60.

14 Q. And when did you leave?

15 A. Pardon me?

16 Q. When did you leave the Pain Center?

17 A. I left, it was October of 2017.

18 Q. Okay. And when you -- so when you say in October of 2017
19 that it grew to I think you said 50 or 60, is that right,
20 injections or patients with injections?

21 A. That was variable, but on -- on an average, I'd say 50 was
22 a fair number 'cuz there were days -- not many days were
23 slower. There were days that were more than that, but I -- I
24 like to keep with numbers I can say with certitude, which we
25 averaged about 50, and that was just in the one room. What was

1 going on in the second room I don't know.

2 Q. That's what I was going to ask you. The -- the number
3 of -- they say 50 to 60, is that the ones that you were
4 personally involved with either giving the injection or
5 providing the sedation?

6 A. Yes.

7 Q. Was it also another room during the day was anesthesia
8 and -- and injections were happening?

9 A. Yes, there was.

10 Q. So there could be tens or dozens more of injections
11 happening in that other room on the same day?

12 A. Yes. As far as the numbers, I -- I can't say, but there
13 was a second room running.

14 Q. How many of the patients at the Pain Center received
15 sedation before receiving a back injection, ballpark term?

16 A. Oh, the -- the vast majority, at least 90 percent.

17 Q. And is the sedation billed separately from the injection?

18 A. Excuse me. Yes, it is.

19 Q. Was there anyone at the Pain Center who encouraged you to
20 encourage patients to get injections?

21 A. To get injections? I can't say that. I can say that we
22 were encouraged to have more modalities than just medication.
23 Now, I can't say what happened in Warren. I can only say what
24 happened in my clinic, which was patients had the option of
25 seeing a chiropractor, physical therapy, injections. I even

1 approved one patient who said she used aquatic therapy and it
2 helped. But one of our early -- my first conversations with
3 Dr. Backos, "We're not a pill mill and this is how we express
4 that, that we want to see people doing something besides just
5 getting pain pills and going home." So that was the standard
6 to which I -- I followed.

7 Q. So when you say modalities, that could be -- that could be
8 injections but it could be physical therapy?

9 A. Yes.

10 Q. Or chiropractic services, things like that?

11 A. Yes.

12 Q. In terms of the procedure or progression of injections,
13 did Dr. Bothra indicate to you or did you come to learn through
14 your time there that there was a certain sequence that the Pain
15 Center used for doing injections?

16 A. On the case about Dr. Bothra, I was joking towards the end
17 how predictable it was that a patient comes in with back pain,
18 they'll get a caudal, then they'll get facet injections, then
19 get facet injections, then they get Rhizotomy, and that was not
20 a hundred percent of the time but it was a very recognizable
21 pattern.

22 Q. Okay. So I -- I'm not sure the jury caught that. You
23 said that you told Dr. Bothra that it -- it was clear to you
24 that a patient got a caudal injection first?

25 A. Which is a form of an epidural.

1 Q. And then they would receive a facet injection?

2 A. Yes.

3 Q. And then they would receive another facet injection?

4 A. Yeah, two tests goes to -- to lead into Rhizotomy.

5 Q. And Rhizotomy is -- is another name for an RFA?

6 A. Yes, RFA, they're both proper names.

7 Q. Destruction of a nerve ending?

8 A. Destructure [sic] -- destructure [sic] of -- destruction
9 of the nerve, yes.

10 Q. When you joked with Dr. Bothra that treatment was
11 predictable, did he say anything in response to you?

12 A. Oh, I joked about it, not to him, no.

13 Q. How did you come to notice this somewhat --

14 A. Oh, I sedated --

15 Q. -- standard practice?

16 A. -- I sedated so many of his patients. I saw what was
17 going on. I would see the charts, I would see what was -- what
18 was happening.

19 Q. Would you provide sedation for patients that Dr. Bothra
20 was providing injections to?

21 A. Yes. Not always but I -- I did -- I worked with him quite
22 a bit.

23 Q. On the times that you sedate patients for Dr. Bothra, did
24 Dr. Bothra come into the -- in to the room and -- explain
25 anything to the patient before he performed the injection?

1 A. Hardly ever, and then only if asked.

2 Q. Okay.

3 A. Patients would come in sometimes and ask me what they were
4 going to have done and I'd say, "Well, you need to talk with
5 Dr. Bothra," 'cuz I was there for the sedation, and even if I
6 knew the answer, I wouldn't -- would not provide it.

7 Q. And during the times that you were providing sedation for
8 patients that Dr. Bothra was giving injections, did you ever
9 witness any patients complain to Dr. Bothra?

10 A. Oh, yes.

11 Q. What were they explaining about?

12 A. Well, a lot of times, "Well, you're injecting my back but
13 my neck hurts. Why can't we have the -- you work on that?"
14 And he would say, "We have to complete this before we can
15 do work on your neck," because he had to -- it seemed to me --
16 in fact, he criticized me for not doing the same. He wanted
17 one area done to completion before you move on to the next,
18 where I would deal with the problem the patient saw most
19 pressing.

20 Q. Okay. So your practice was if a patient had, say, both
21 neck pain and lower back pain --

22 A. Mm-hmm.

23 Q. -- you wanted to treat those at the same time?

24 A. Yeah. If -- if the patient's back injections were helping
25 to the point where the neck now bothered them more, I felt that

1 that was what I would -- should be doing is moving up and
2 taking care of the neck, and if the back still bothered you
3 later, we can come back to that. It was actually a specific
4 instance where I did that, and he followed up covering when I
5 wasn't there and he felt that that was too confusing and told
6 me in a meeting with other physicians, it was Dr. Backos and
7 Dr. Edu were there, that he didn't like that, that he didn't
8 think I should be doing it that way.

9 Q. And did he say why you shouldn't be doing it that way?

10 A. 'Cuz he felt it was confusing.

11 Q. Can -- can you elaborate on that, is that -- or is that
12 the best you can do?

13 A. That starting on the back and then jumping and taking care
14 of the neck and then when that got better coming back to the
15 back to him seemed confusing. That was the explanation he
16 provided.

17 Q. Okay. I'd like to talk to you next about informed consent
18 forms, or actually I'm -- hold on with that.

19 A. I'm sorry?

20 Q. Strike that. I'm going to --

21 A. Oh.

22 Q. I'm not going to ask that.

23 A. I -- I'm just -- my hearing aids are loud enough to where
24 I -- I am hearing too much, so I'm sorry but --

25 Q. No, don't apologize. I'll try to -- I try to be clear.

1 I'll try to be even clearer.

2 With respect to durable medical equipment --

3 A. With respect to?

4 Q. Durable medical equipment.

5 A. Durable medical equipment, yes.

6 Q. The doctors at the Pain Center would prescribe back
7 braces, is that correct?

8 A. Yes.

9 Q. When a patient is -- is prescribed a back brace, what
10 procedure or general procedures should be followed?

11 A. To -- for them to have a back brace?

12 Q. Yes.

13 A. Well, the patient deserves an explanation, preferably from
14 the physician, that this is what I would like you to do, and
15 then there should be either the physician or representative who
16 is skilled in fitting it on the patient, explaining the best
17 way to handle it. I personally would tell patients don't wear
18 it all the time if it makes you feel good. I don't want your
19 back getting weak. It's there for your worst days. In fact, I
20 would try to -- to say don't carry -- keep it on more than four
21 hours at a time. And then we should be following up in
22 subsequent visits and ask did you -- is it helping.

23 Q. Based on your time at the Pain Center, including your
24 review of patient files who were treated by doctors other than
25 you, were other -- were the other doctors at the Pain Center

1 following those protocols?

2 A. That's a -- that's a question that's hard to answer in a
3 short answer. I don't believe they were, no.

4 Q. And what -- what basis gives you the -- the ability to say
5 that they were not?

6 A. Well, I was assured by Dr. Bothra that the medical
7 assistants had been trained and would fit the braces and
8 explain everything to the patient, and I relied on that 'cuz I
9 was quite busy. There was a day when a patient had a bag in
10 his hand and I said, "Oh, you like the brace?" He said, "Oh,
11 is that what's in there?" And I put a stop to everything,
12 found the medical assistant who had just handed it to him -- he
13 didn't even know what was in the bag -- made her go back in,
14 put it on and let him try it out.

15 And then in different discussions, I can describe one
16 was Ramona who was a medical assistant, later became an RN, and
17 two of the MAs that I can describe, I can't tell you their
18 names, they're lost to my memory, but all three would say, "Oh,
19 over at the Warren clinic we just hand them the bag, send them
20 out the door." And they -- they weren't even the least bit shy
21 about saying so, that, "No, we -- we just hand them --
22 they're -- we're too busy. We just hand it to them and they'll
23 take it home."

24 MR. HARRISON: Your Honor, I'm going to object to
25 the --

1 THE COURT REPORTER: Mr. Harrison, can you please
2 take your mask off?

3 THE COURT: Go ahead.

4 MR. HARRISON: I'm going to object to these long
5 rambling, volunteered answers that go far beyond the question
6 asked.

7 THE COURT: I'd ask Mr. Helms to tighten it up a
8 little bit please. The witness does have a -- a -- a tendency
9 to sometime give narrative answers, and if you can keep -- keep
10 things tightened up a little bit better, that would be most
11 appreciated. Go right ahead.

12 MR. HELMS: Yes, Your Honor.

13 BY MR. HELMS:

14 Q. Dr. Kufner, just yes or no, did you ever receive pressure
15 from Dr. Bothra to prescribe more durable medical equipment
16 like back braces?

17 A. Oh, yes.

18 Q. Can you tell me how and what forms he pressured you to do
19 that?

20 A. The sticky notes. Any patient that had insurance that
21 would cover a back brace and didn't get a back brace, there
22 would be a sticky note on the chart as a reminder.

23 Q. And when you say sticky note, are we talking about a
24 little Post-it Note or are we talking about --

25 A. A Post-it Note, a yellow Post-it Note.

1 Q. So like something smaller than this but --

2 A. Oh, yeah, but -- but clearly around the inside of the
3 chart where it couldn't be missed.

4 Q. Okay. So on -- on patient charts of yours there would be
5 a note saying give --

6 A. Back brace or may need back brace.

7 Q. And did Dr. Bothra ever have any specific conversations
8 with you that you needed to prescribe more durable medical
9 equipment?

10 A. I came to him about it and asked him why he was doing
11 this.

12 Q. Sorry?

13 A. I said I went to him and ask why he was doing it.

14 Q. And what did he say?

15 A. At that -- the first conversation he said, "Oh, it's just
16 my habit. I just want to make sure you're covering all the
17 bases," and I assured him that I did; that if I felt they
18 needed a back brace, I would order it and they would know that
19 it was coming and I would want them to use it. If I didn't
20 think it was indicated, I wouldn't do it.

21 Q. Did Dr. Bothra give you any justification for why he was
22 telling you to prescribe more back braces?

23 A. He just felt that it was a necessary thing to do, and
24 that in a different conversation he even suggested that if a
25 patient didn't think they wanted one, I should send it home

1 with them anyway 'cuz they might start to use it, and I
2 disagreed.

3 Q. Were there any signs in the work -- worker areas at the
4 Pain Center about what -- what insurance companies would pay
5 for back braces and physical therapy and lab services?

6 A. Yes. That -- that came later but it did happen.

7 Q. Okay. Dr. Kufner, if you could look in your binder,
8 there's Exhibit 173, and I can come assist you with finding it.

9 A. 173? Okay.

10 MR. COLLINS: Your Honor?

11 THE COURT: Yes.

12 MR. COLLINS: I hate to interrupt. I noticed your
13 clerk earlier about a scheduling issue at --

14 THE COURT: You need to excuse...

15 MR. COLLINS: (Nods in the affirmative.)

16 THE COURT: Yeah, I understand completely.

17 MR. COLLINS: Thank you.

18 THE COURT: That's no problem at all. If you want to
19 leave right now, go ahead.

20 MR. COLLINS: Thank you, Judge.

21 THE COURT: My pleasure. Mr. Collins has an
22 important professional obligation in about 12 minutes
23 downstairs, so if -- if you need to leave, I encourage you to
24 go, okay?

25 (Mr. Collins excused at 1:48 p.m.)

1 Go ahead, Mr. Helms.

2 MR. HELMS: Thank you, Your Honor.

3 THE COURT: Thank you for your patience. Go right
4 ahead.

5 BY MR. HELMS:

6 Q. Dr. Kufner, do you recognize what Exhibit 173 is?

7 A. Yes, I do.

8 Q. And what is it?

9 A. This is a list of the -- the insurances that we accepted
10 and what modalities that they would cover between -- this
11 includes --

12 Q. Well, just stop there for a second.

13 A. Okay.

14 Q. So did you personally obtain this document?

15 A. Yes, I took it off of the wall. It had to have been hung
16 in my clinic.

17 Q. Okay.

18 MR. HELMS: Your Honor, based on that, I would like
19 to move Exhibit 173 into evidence.

20 THE COURT: Okay.

21 MR. WEISS: No objection, Your Honor.

22 THE COURT: Thank you very much. Go ahead. 173 is
23 received.

24 MR. HELMS: Would you pull that up?

25 BY MR. HELMS:

1 Q. So I'm -- I'm sorry, Dr. Kufner. Now, you were saying
2 that -- what does this document describe?

3 A. I'm sorry?

4 Q. What does this document describe in general?

5 A. Well, it describes each insurance company and what they
6 will cover. The DME stands for durable medical equipment. UDT
7 is urine testing for drugs. PT, of course physical therapy and
8 procedures. Everybody allowed procedures but some required
9 prior authorization.

10 Q. And I think you testified that this was hanging up in your
11 office or in the -- in the Eastpointe location?

12 A. In the Eastpointe location, yes.

13 Q. Were there similar signs in the worker areas in the Warren
14 location?

15 A. Well, it's been a while, but memory serves me, I think
16 there were.

17 Q. Okay. And what's the significance, if anything, of these
18 being listed in the worker areas?

19 A. Well, it could be seen as an attempt to be helpful except
20 that if the --

21 MR. WEISS: Your Honor, I -- excuse me, I'm sorry.
22 I'm going to object --

23 THE COURT: Speak to the mic.

24 MR. WEISS: I don't -- I don't have a problem with it
25 being introduced, but now he's trying to testify as to

1 subjective intent of other individuals as to why it may or may
2 not have been there. I mean unless he's clairvoyant, I'm going
3 to object to what it was in someone else's mind that was not
4 articulated to him.

5 THE COURT: Okay. I -- I think that's fair and I'll
6 sustain that objection to the answer.

7 MR. WEISS: Thank you.

8 THE COURT: I think that the witness can testify as
9 to his understanding of why it was there but not why somebody
10 else decided to put it there.

11 Go ahead, Mr. Helms.

12 MR. HELMS: That's fine, Your Honor. We can take
13 this down then.

14 BY MR. HELMS:

15 Q. Dr. Kufner, I'm next going to direct you --

16 THE COURT: I mean in some ways it speaks for itself
17 and it's arguable between counsel as to what it shows and why.
18 But -- but anyway, the objection is sustained as to the latter
19 part of the answer, and Mr. Helms, it's in evidence and you can
20 go right ahead.

21 MR. HELMS: Thank you, Your Honor.

22 BY MR. HELMS:

23 Q. Dr. Kufner, I would like to take you next to Exhibit 180
24 which is already in evidence.

25 MR. HELMS: So Ms. Adams, could you pull up 180?

1 BY MR. HELMS:

2 Q. And Dr. Kufner, do you need help finding it?

3 THE COURT: That's in evidence, 180.

4 MR. HELMS: Yes.

5 THE COURT: Yeah. Okay. Go ahead.

6 Q. Can you see it, Dr. Kufner? It's also on the screen in
7 front of you.

8 A. Okay.

9 Q. Let me know -- let me know when you're done reviewing.

10 A. Well, I'm not trying to be funny, but Dr. Bothra's
11 handwriting is hard -- as hard to read as my own, and I say
12 that kindly 'cuz I know my penmanship is lousy, but --

13 Q. I understand. Why don't I walk you through some of the
14 three questions regarding this document, okay?

15 A. Okay. Sure.

16 Q. Okay. First, do you see your name at the top there? It
17 says Dr. Edu and Dr. Kufner and Dr. Backos. Do you see that?

18 A. Yes.

19 Q. Okay. This document here, these -- is this the type of
20 note that you would -- you would find on either a patient file
21 or handed to you?

22 A. It certainly would not be in a patient chart. It would be
23 somewhere for me to see hanging on a wall or might have been
24 handed to me to review, but it wouldn't be on a patient chart.

25 Q. Okay. And, in fact, at the bottom it's signed by Dr.

1 Bothra, is that right?

2 A. Yes, it is.

3 Q. Do you recall receiving this specific note?

4 A. Do I recall?

5 Q. Receiving this note?

6 A. It -- it's familiar now that I see it and I see my name is
7 on it, but I would not have probably been able to bring it up
8 otherwise.

9 Q. When you -- do you recall when you received this note what
10 you thought of it?

11 A. Well, I wrote at the last line, "We're not being -- we are
12 not using much of neck or ankle brace!" with an exclamation
13 mark. "Is there more need of it!" with an exclamation mark,
14 not a question. The rest of it, it looks like it's rather
15 instructional, what one needs to -- to -- of provide these
16 braces.

17 Q. So is it fair to say this is an example of -- of the --
18 the pressure Dr. Bothra put on you to prescribe more durable
19 medical equipment?

20 A. Well, when you look at Item 3, I take that definitely
21 as -- as a urging me to do more of the -- of the ankle and neck
22 braces.

23 Q. Let's turn now, Dr. Kufner, to controlled substances. Did
24 you come to have an understanding that Dr. Bothra had a
25 standard of practice with regard to prescribing controlled

1 substances?

2 A. His own standard, yes.

3 Q. And how --

4 A. He -- he wanted to see minimal narcotics, that they would
5 be used and explained to the patient that they were an adjunct.
6 That he wanted to keep -- he did not want to see high dose
7 narcotics. This is as he explained to me, high dose narcotics.
8 And for things he considered low dose such as Norco and
9 Percodan, he wanted to see those small numbers, three or four a
10 day.

11 Q. And did he tell you why he wanted to see only small
12 numbers?

13 A. Because he felt that that kept him under the radars for
14 scrutiny.

15 Q. Scrutiny from law enforcement?

16 A. Or payors or whoever might be looking.

17 Q. Whoever might be looking into the -- the billing data of
18 the Pain Center?

19 A. Yeah. He was never -- I mean he never said law
20 enforcement. If he -- if he had, I would have had a --
21 a problem. But he just felt that this calls less attention
22 when you're not passing out a lot of medication.

23 Q. And -- and do you know, was there a point when the doctors
24 at the Warren location were encouraged to lower the number of
25 dosages to three times a day or less?

1 A. I was advised that that had happened after I left, that
2 there was a mutual agreement made.

3 MR. CHAPMAN: Objection, Your Honor. It's hearsay.

4 THE COURT: That's sustained. Go ahead.

5 MR. CHAPMAN: Move to strike.

6 MR. HELMS: Well, Your -- Your Honor, if I could ask
7 one more question, I think it would come from a co-conspirator
8 statement if I'm allowed to ask the basis for it.

9 THE COURT: Let's review this for a minute.

10 (Brief pause)

11 Well, yeah, if you want to approach it from
12 establishing a foundation for the, quote-unquote, mutual
13 agreement, I'll let you do that. Go ahead.

14 BY MR. HELMS:

15 Q. Dr. Kufner, did one of these four defendants on trial
16 today tell you that there had been a decision to lower
17 medication to three times a day or less?

18 A. Dr. Russo told me that in a phone conversation.

19 Q. Okay. I would now like to turn --

20 MR. HELMS: Oh, I apologize, Your Honor. I see
21 it's -- it's 2:00 o'clock. Do you know how --

22 THE COURT: Let's keep going a little longer. How
23 much -- how much do you have left with this witness?

24 MR. HELMS: I would say 15 to 20 minutes.

25 THE COURT: Okay. Why don't you go through, you

1 know, another large -- I don't know, you said you were on to
2 narcotics or medications at this point?

3 MR. HELMS: I was moving to laboratory services next.

4 THE COURT: Yeah, let's go through laboratory
5 services and see where we are after that.

6 MR. HELMS: Okay.

7 BY MR. HELMS:

8 Q. Dr. Kufner, when you first started at the Pain Center in
9 2014, did the Pain Center have a general practice of using
10 urine drug screens?

11 A. No.

12 Q. Did any of the doctors have a general practice of using
13 urine drug screens?

14 A. Well, Dr. Backos's practice was separate from ours and he
15 routinely -- routinely did. And when I found out that Dr. Bothra
16 and Dr. Edu were not routinely checking urine, I insisted that
17 I would be doing it at Eastpointe, and I did.

18 Q. Okay. Did you ever have any discussions with Dr. Bothra
19 about why he was not doing urine drug screens in 2014?

20 A. He felt with the low level of prescribing, that it wasn't
21 necessary.

22 Q. At some point did the Pain Center begin to use urine drug
23 screens more often?

24 A. Yes.

25 Q. Okay. Do you know, can you recall precisely -- not

1 precisely but generally when that happened?

2 A. Well, we had a -- a meeting, Dr. Bothra, Dr. Edu, Dr.
3 Backos and me, and he was saying does anyone have any ideas,
4 and I brought it up as, well, this is something we should be
5 doing anyway and it -- it probably is a profit center. And
6 later he thanked me for bringing it up when he had tried with
7 Great Lakes Lab and had figured out that, yes, there is profit
8 in this, and he credited me for giving him the idea to start
9 his own lab.

10 Q. So -- so at some point Dr. Bothra learned -- well, it was
11 brought to his attention that we should be doing urine drug
12 screens?

13 A. That -- that it was what, doing urine drug screens?

14 Q. At some point you and others brought it to his attention
15 that the Pain Center should be doing urine drug screens, is
16 that fair?

17 A. Well, yes, he finally agreed it was a good idea.

18 Q. And then you had mentioned Great Lakes, First Great Lakes
19 Medical. Is that where he first was using --

20 A. That was just a name to me. It was a lab where urine
21 samples, and then even after we had our own lab if I wanted to
22 do saliva sample, that's where they would go.

23 Q. And then did you say that Dr. Bothra then opened his own
24 laboratory?

25 A. Yes.

1 Q. Okay. And when Dr. Bothra opened his own laboratory, did
2 the frequency of urine drug screening change?

3 A. In my practice, no.

4 Q. With respect to the doctors in the Warren location, did it
5 change?

6 A. We had discussions and we had agreements what were
7 reasonable guidelines, and I insisted that less than four times
8 a year was not enough, but I can't say what everyone else did.

9 Q. Okay. Was there a general policy about what would happen
10 if a patient failed a -- had an abnormal urine drug screen?

11 A. Yes. There was a consensus that we would not punish
12 people, and if there was a dirty urine and that it was a
13 prescribed drug, an explanation, they got it from a sister,
14 whatever, that they'd get a second chance. If it was something
15 off the street like heroin or cocaine, there would be clinician
16 judgment whether they got a second chance, but a second one
17 would be a cutoff. And it was also considered a dirty urine if
18 the drugs weren't there unless they had pills to show that they
19 hadn't needed them for a few days and didn't take them.

20 Q. And that -- that policy, was it a firm policy or was it a
21 flexible --

22 A. Nothing was written. It was a consensus amongst us in
23 discussions.

24 Q. Okay. So there may have been some patients who had
25 abnormal urine screens more than twice but they weren't cut off

1 from treatment?

2 MR. HARRISON: Your Honor, I'm going --

3 MR. WEISS: Your Honor, that calls for speculation.
4 I'm going to respectfully object.

5 THE COURT: Sustained.

6 MR. WEISS: Thank you.

7 BY MR. HELMS:

8 Q. Do you know if there were patients who had more than two
9 abnormal urine drug screens and were not cut off from
10 treatment?

11 A. I -- I -- I can't say that I can answer that. I believe
12 so, but I can't say that I know that with such certainty.

13 Q. Okay. Now, I'm going to change now to walk-in services.
14 When you first started the Pain Center, was there a walk-in
15 portion of the clinic?

16 A. No.

17 Q. Okay. Do you recall generally when that began?

18 A. It was I think around the end of 2016. I may not be
19 totally accurate on that. I was not part of it.

20 Q. Do you recall how you and other employees at the Pain
21 Center were informed that a walk-in clinic was going to be
22 started?

23 A. Oh, it was just an announcement that we're going to do --
24 do this, and it started with sign -- a sandwich sign on the
25 sidewalk, and after a few months it was painted on the

1 building.

2 Q. Okay. Was -- was there ever a meeting where someone said,
3 "We're about to start a walk-in clinic"?

4 A. Not that I was part of.

5 Q. What did you -- how did you feel about it when you heard
6 that this was going to become a walk-in clinic?

7 A. I thought it was the worst idea I had ever heard.

8 Q. And why is that?

9 A. Because it was going to be a Saturday walk-in clinic for
10 pain, and I was -- made no secret that I felt that that was an
11 invitation for drug users to come try to get pills and that we
12 would have a very low yield, if any, of legitimate patients.

13 Q. Did any of the defendants on trial today have
14 conversations with you about starting a walk-in clinic?

15 A. I asked Dr. Russo what it was like to work in the walk-in
16 clinic after it'd been going for a while.

17 Q. And what did he say?

18 A. He hated it. He said, almost to the man, people are
19 coming in just looking for drugs and wanted very big numbers of
20 strong drugs, and they would walk out with a small prescription
21 of Norco and a back brace.

22 Q. Okay.

23 A. And they never came back.

24 Q. Dr. Kufner, I'd like to move now to the fact that you were
25 a defendant in this case, correct?

1 A. Yes, I am or was.

2 Q. You were -- you were a named defendant in the indictment,
3 correct?

4 A. I was.

5 Q. But you are not going to trial?

6 A. No.

7 Q. And that's because you pled guilty?

8 A. Yes, I did.

9 Q. To one count of health care fraud conspiracy?

10 A. Yes.

11 Q. Why did you plead guilty?

12 A. Because I did those things that I said I did in the plea.

13 MR. HELMS: Your Honor, may I have one moment?

14 THE COURT: Yes.

15 (Brief pause)

16 Q. Dr. Kufner, with respect to you pleading guilty, did
17 the -- did the government promise you anything in return for
18 pleading guilty?

19 A. Promise me? No.

20 Q. Did the government say they would dismiss the other counts
21 in the indictment against you other than Count 1?

22 A. Oh, yes, they did dismiss other counts, yes.

23 Q. Okay. And did the government say it would recommend a
24 sentence not to exceed the midpoint of your guideline range?

25 A. I believe that that was what was -- was said.

1 Q. As part of your Rule 11 agreement?

2 A. As part of it. I know -- I know there were conversations,
3 and I'm going to be the first to admit I'm not a lawyer, but
4 that is my understanding, that the government has offered to
5 make recommendations, but Judge Murphy will be the one who
6 makes the decision what happens to me.

7 Q. Okay. And Dr. Kufner, you are now cooperating in this
8 case, correct?

9 A. Yes, I am.

10 Q. In fact, you have met with -- with me and with government
11 agents prior to this --

12 A. Yes, I have.

13 Q. -- trial?

14 And are you hoping that by cooperating and by
15 testifying today, that the government will file a motion to
16 lower your guidelines range?

17 A. Well, I'm hoping for that, yes.

18 Q. And has anyone promised you that's going to happen?

19 A. No. I would say Dr. -- or I'm sorry, my bad -- Judge
20 Murphy has made it clear that the decision is his and that I am
21 abiding by that.

22 Q. Okay. And are you hopeful that Judge Murphy will grant
23 you leniency?

24 A. I'm hopeful.

25 Q. But again, you've received no guarantees?

1 A. None at all.

2 Q. Okay. Dr. Kufner, you have also filed what's known as a
3 qui tam complaint?

4 A. I did.

5 Q. Okay. Are you able to explain to the jury in just broad
6 strokes what a qui tam is?

7 A. It turns out that that is a civil action where somebody
8 witnesses what they believe is fraud and takes it to the courts
9 as a -- a whistleblower.

10 Q. So it's someone who files a complaint on behalf of the --
11 of the United States saying fraud is happening against you?

12 A. Yes.

13 Q. In -- in summary, you have alleged that the Pain Center
14 and Dr. Bothra were defrauding the United States, is that fair?

15 MR. WEISS: Leading question, Your Honor. I'm going
16 to object.

17 THE COURT: Sustained.

18 MR. WEISS: Thank you.

19 BY MR. HELMS:

20 Q. What is -- what is the general nature of the qui tam
21 complaint that you filed?

22 A. It is Dr. Kufner and one other co-relator and the U.S.
23 government against Dr. Bothra and the Pain Center.

24 Q. And what are the general allegations in your complaint?

25 A. Medicare fraud and -- and --

1 MR. CHAPMAN: Your Honor, I have to object.

2 THE COURT: Okay.

3 MR. CHAPMAN: This completely mischaracterizes the
4 nature of the qui tam complaint. Those are filed under the
5 False Claims Act and are essentially --

6 THE COURT: All right.

7 MR. CHAPMAN: -- civil claims which do not require a
8 finding of fraud.

9 THE COURT: All right. Well, I'm going to overrule
10 the objection because he is stating his understanding of the
11 qui tam complaint, and I bet you will cross-examine him and
12 correct those issues that you just mentioned when you do it.

13 Go ahead, Mr. Helms.

14 BY MR. HELMS:

15 Q. Well, and -- and for the record, Dr. Kufner, you have
16 alleged civil fraud claims in your complaint, correct?

17 A. Yes.

18 Q. Okay. Through that -- through that complaint, if there's
19 a monetary recovery, are you hoping to get a portion of that
20 recovery?

21 A. When I -- when it was filed, yes. At this point I'm not
22 so sure.

23 Q. What would you say the general allegations in your -- your
24 complaint are?

25 MR. WEISS: Asked and answered, Your Honor. He's

1 already gone through it.

2 MR. HELMS: But Your Honor, the -- the broad answer
3 was fraud and then there was an objection, and I don't think
4 he's actually mentioned what the actual final allegation --

5 THE COURT: I'll -- I'll -- I'll allow -- allow the
6 answer if the doctor wants to --

7 MR. WEISS: Thank you, Your Honor.

8 THE COURT: -- convey his understanding of what the
9 complaint alleges in the qui tam action. Go ahead.

10 A. Well, the first thing that came to mind outside of issues
11 with the surgery center which we've already discussed, there
12 are others, but the first thing that compelled -- felt -- left
13 me feeling compelled to do something was when I saw over 1,500
14 billings of services that had been performed by Dr. Russo but
15 had been billed by Dr. -- for Dr. Bothra 'cuz Dr. Russo was not
16 yes -- yet credited with that insurance company. So there were
17 a multitude of claims for work Dr. -- Dr. Bothra claimed he had
18 done but had been done by somebody else.

19 BY MR. HELMS:

20 Q. Were there also claims in your complaint about the
21 overbilling of back braces?

22 A. That was in there I believe.

23 Q. Now, I -- you didn't mention -- strike that.

24 THE COURT: How much longer now?

25 MR. HELMS: 10 to 15. I think I said that last time

1 too.

2 THE COURT: You said 15 or 20. I think that's a
3 good -- good -- good point -- the -- the jurors want you to
4 finish, but I -- I think we'll let it go at that because it's
5 warming up in here and it's 2:10. Okay. Why don't we take a
6 break for the weekend at that point.

7 MR. HELMS: Thank you, Your Honor.

8 THE COURT: Thank you, Mr. Helms.

9 Okay. You may step down if you'd like, Doctor.

10 THE WITNESS: Thank you.

11 (Witness excused at 2:10 p.m.)

12 THE COURT: Okay. So, ladies and gentlemen, we've
13 had a splendid week with a lot of trial practice and a great
14 deal of concentration and attention paid by our jurors and I
15 know you've -- you've worked hard.

16 The first thing I want to say is -- is that we're
17 going to start 10:00 o'clock on Monday. So enjoy your weekend.
18 Relax. I would strongly urge you to put this trial and any of
19 its facts completely out of your mind. I would continue to
20 admonish you not to talk about the case with anybody for all
21 the reasons that I've said and to let us know if anyone wants
22 to talk about the case with you.

23 If you can be here anytime between 10:00 a.m. or,
24 excuse me, anytime before 10:00 a.m. on Monday, we'll get
25 started and go till about 3:00. I anticipate we're going to

1 complete the testimony of -- of Dr. Kufner, but I do know we
2 have witnesses like the one earlier today who come from out of
3 town, and sometimes because of travel and all that, we -- we
4 sometimes let people get out of order a little bit just for the
5 convenience of -- of the witnesses who are not from Southeast
6 Michigan. I don't know if we're going to have to do that on
7 Monday or not. But otherwise, we'll be back at it and we'll go
8 for the remainder of next week and we'll -- we'll see where
9 we're at. But I think we're making very good progress. We're
10 up to our fourth witness. We've had all the preliminaries and
11 we just have to hang in there together, okay? All right.

12 Have a great weekend. Let's all rise for our jury
13 and we'll take our weekend recess shortly.

14 (Jury excused at 2:12 p.m.)

15 THE COURT: Okay. Everybody may be seated.

16 I -- I want to talk just really, really quickly about
17 a couple of things. I think the U.S. Attorney's being sworn in
18 downstairs and I'm sure some of you want to attend that and I
19 want you to attend that as well.

20 I -- I just have a question on the -- on the United
21 States' witness list, and I appreciate -- I got your, excuse
22 me, exhibit list as I requested that was marked. 1A, 2A, 3A,
23 et cetera are the transcripts of 1, 2, 3, et cetera, which are
24 recordings.

25 My question is, having seen the transcripts at the

1 bottom of the screen during the -- during the playing of the
2 videos and having you identify them, should we not just admit
3 1A through 16A inclusive and instruct the jury that the --
4 the -- the tapes are the evidence and the transcripts are
5 demonstrative aids?

6 MS. McMILLION: Your Honor, with respect to that, it
7 has been the practice, and I have not had a discussion with
8 defense counsel, but just that we admit the actual exhibit.
9 And I understand that the Court has recognized that the video
10 or audio recording itself is the actual exhibit.

11 THE COURT: Right.

12 MS. McMILLION: We did have the agent on the stand at
13 least verify that he had reviewed them.

14 THE COURT: Right.

15 MS. McMILLION: They were provided to counsel so that
16 they could review them in advance so that we would need to make
17 any adjustments, but it literally is just an aid to a jury and
18 I don't think it's evidence in the case.

19 THE COURT: Right, exactly. So any objection to
20 admitting as demonstrative aids 1A through 16A inclusive? No
21 one has an objection so I'm going to admit those and record
22 those on here. So thank you to the lawyers on this.

23 Now, I do -- this was touchy. When Mr. Helms had Dr.
24 Kufner on the stand, Mr. Chapman made a -- made a -- an
25 objection as to speculation regarding the witness's

1 understanding of what Bothra was saying about Edu's statement.
2 Mr. Helms responded that those were co-conspirator statements
3 and I agreed.

4 Now, *Bourjaily* from 1997 is black letter law that
5 admission of co-conspirator statements in a case like this,
6 notwithstanding the hearsay rule, does not violate the
7 confrontation clause. I was trying to be extra careful about
8 the fact of this. As -- as I was thinking this through, I
9 don't know, maybe you want to write a brief on this, maybe you
10 don't need to, but my concern was that Kufner asserted what
11 Bothra told him, and then probably pursuant to the conspiracy,
12 Edu said to Bothra, not to -- not to Kufner but to Bothra
13 that -- that he didn't like Kufner. Now, is that a
14 co-conspirator's statement? Yes. But what was troubling me
15 was that Edu has no way to impeach Kufner on the basis of
16 Bothra not saying that or not being accurate because Edu can't
17 call Bothra to the stand.

18 So that was my -- that was my issue there. You
19 probably didn't know that or -- or consider it, but that's why
20 I sustained the objection. And if I'm wrong about that, I'd
21 like to know. But -- but obviously *Bruton* and confessions
22 would have prohibited the introduction of a confession by Edu
23 against Bothra through Kufner or any other witness. That's
24 black letter law, *Bruton vs. United States*, we all know that,
25 the co-conspirator -- conspiracy and confrontation issue. But

1 that -- that's what was going on in my mind, and I just -- I
2 just wanted to -- I just wanted to explain that for you.

3 The Monday schedule's been set forth. We're going to
4 go all week next week, 8:30 to 2:30 otherwise.

5 And Mr. Weiss, you -- your client hasn't had his
6 materials sent over to Livingston yet, is that what I'm told?

7 MR. WEISS: Yes, Your Honor, that is my
8 understanding. And what is exacerbating the situation is
9 there's no visitation for attorneys at the Livingston County
10 Jail over the weekend.

11 THE COURT: Okay.

12 MR. WEISS: And now that we're getting into some of
13 the scientific and medical aspects of the trial, the inability
14 for myself and Mr. Rogalski to discuss these matters in depth
15 with our client is impacting adversely our ability to
16 effectively represent him as he's entitled under the Sixth
17 Amendment.

18 And so I don't have the ability to countermand
19 Livingston County. I don't have the ability to send him back
20 to Milan. And I know we've gone through it with the Court and
21 I don't mean to be difficult, but I think I'd be remiss if I
22 didn't at least place on the record that what the marshals have
23 done by removing him from Milan is now really seriously
24 impacting my ability as well as Mr. Rogalski's ability to
25 represent our client.

1 THE COURT: Okay. All right. Well, you -- the
2 record's crystal clear on that and I respect the -- the
3 objection. You know, I don't want to have a mini trial on that
4 issue and, you know, there's some -- or I hesitate to say this.
5 There is some grounds for, you know, civil -- civil litigation
6 should -- should -- should all those things be true.

7 But in -- in terms of -- in terms of defendant
8 placement, administrative decisions of the -- of the marshal
9 and housing during trial, I have spoken with the Marshal
10 Service about this, I know Mr. Weiss has. I've concerned --
11 I've conveyed my concerns, and I -- I -- I -- I'm at a loss to
12 overrule the marshal on -- on his decision. I will consult
13 with Deputy Hughes who manages -- manages these things in our
14 district and I'll -- I'll discuss with him the essential nature
15 of the documentation and the fact that as of this morning
16 it's -- it still wasn't there 'cuz I think that is something I
17 should be able to do something about.

18 But otherwise, we -- we proceed apace, and if there's
19 a showing that -- that Dr. Bothra's not getting effective Sixth
20 Amendment counsel as a result of this issue, then we'll
21 consider that showing and see if we can do anything about it,
22 or maybe the Court of Appeals if there's a conviction will, but
23 I've gone as far as I can on this thing right now. And I do --
24 I do respect the objection and -- and want to reassure
25 everybody on the defense side, Mr. -- Dr. Bothra, Mr. Rogalski

1 and Mr. Weiss, that I'm aware and proceeding as I can, okay.

2 MR. WEISS: Thank you very much for allowing me to
3 make a record, Your Honor.

4 THE COURT: Yeah, of course, of course. All right.
5 I hope you all have a good weekend. It's 2:20. The U.S.
6 Attorney is being sworn in downstairs, and I don't think it
7 would be seemly for me to go striding up on the bench so I
8 probably won't be there. I encourage you to go, and I believe
9 they'll probably have free food afterwards which you all
10 deserve, okay?

11 So with that, we'll call it a week and be in recess
12 till Monday morning at 10:00 a.m.

13 (Court in recess at 2:20 p.m.)

14 (Proceedings in the above-entitled matter continued
15 to Monday, May 23, 2022)

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C E R T I F I C A T I O N

I, Linda M. Cavanagh, Official Court Reporter of the United States District Court, Eastern District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing pages 1 through 66 comprise a full, true and correct excerpt of proceedings taken in the matter of United States of America vs. D-1 Rajendra Bothra, D-3 Ganiu Edu, D-4 David Lewis and D-5 Christopher Russo, Case No. 18-20800, on Friday, May 20, 2022.

s/Linda M. Cavanagh
Linda M. Cavanagh, RDR, RMR, CRR, CRC
Federal Official Court Reporter
United States District Court
Eastern District of Michigan

Date: July 18, 2022
Detroit, Michigan